IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.884 OF 2004

Smt.Aminabai Abdus Shakoor Sauratiya ...Appellant

Vs.

1. Chahu Sukarya Pawar

2. Ganpat Sukarya Pawar

3. Smt.Janabai Sukarya Pawar ...Respondents.

Mr.K.S.Dewal for the Appellant.
Mr.Sandesh Patil for Respondent No.1

CORAM: A.S.OKA, J.
DATED: AUGUST 23, 2004.

P.C.:

1. Heard Counsel appearing for the parties. The Appeal is filed by the original Plaintiff. The original Plaintiff claims that the Respondents-Defendants agreed to sell the suit land to the Appellant on 8th February 1982 and also executed a general Power of Attorney dated 27th June 1983 in favour of the Appellant. On the basis of the said Power of Attorney the Appellant got a sale Deed dated 15th January 1987 in her favour. The Courts below have held that the Power of Attorney allegedly executed by the Respondents-Defendants in favour of the Plaintiff Aminabai is not established. The Courts below have also recorded a finding that there was no evidence produced by the Plaintiff-Appellant to show that sale price was paid to the

Respondents. Therefore the Appellant's suit was dismissed.

2. Shri Dewal learned Counsel appearing for the Appellant relied upon the Judgment of the Apex Court reported in A.I.R. 2003 S.C. page No.4548 (R.V.E.Venkatachala Gounder Vs. Arulmigu Viswesaraswami and V.P.Temple and another) to contend that once a document was marked as Exhibit without any objection by the contesting party, the issue as to admissibility of the said document cannot be raised at later stage. He also relied upon the Judgment reported in 1923 Privy Council page No.114 (Kanhaya Lall Vs. National Bank of India Limited, Delhi). He has also taken me through the deposition of Balvir Kaur who claims to be the Power of Attorney holder of the Plaintiff-Appellant. In the said deposition a reference has been made to the Power of Attorney executed in favour of the said Balbir Kaur by the Plaintiff. The said Power of Attorney has been admitted in evidence and exhibited. In Paragraph No.5 of the deposition a reference has been made to the Power of Attorney executed by the Defendants in favour of the Appellant-Plaintiff. It is also stated that a copy of the said Power of Attorney is filed on record and it bears the signature of the Plaintiff and Defendants. It is further stated that a certified copy thereof is filed on record which is duly certified by the Sub-Registrar of the at registration No.294/16-17 dated 27th June 1983. From the examination-in-chief it appears that the said copy was not marked as exhibit when the

examination-in-chief was recorded. It is therefore obvious that the ratio of Judgment of the Apex Court in the case of Gounder (supra) will not apply to the facts of the case.

3. The Appellate Court has, therefore, referred to the fact that the original Power of Attorney allegedly executed by the Respondents-Defendants was not placed on record. Nothing is placed on record of the Second Appeal to indicate that certified copy of the Power of Attorney which was produced by the Appellant was marked as exhibit and that when the same was marked as exhibit by the learned Trial Judge, no objection was raised by the contesting Respondents. The Power of Attorney allegedly executed by the Respondent in favour of the Appellant was the basis of the title of the Appellants as Sale Deed is executed by the Appellant in her favour on the basis of the said Power of Attorney.

4. In view of the findings recorded by the Court below that the Power of Attorney is not proved, no case is made out for interference under Section 100 of Code of Civil Procedure, 1908. Second Appeal is devoid of any merit and same is dismissed with no order as to costs.

Judge.